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November 1, 2017

VIA ECF

Hon. Cathy Seibel
The Hon. Charles L. Brieant, Jr.
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

Re: Durling et al. v. Papa John's International, Inc., No. 16-cv-03592-CS

Dear Judge Seibel:

We represent Plaintiffs in this case and submit this pre-motion letter regarding Plaintiffs' anticipated Interim Class Counsel Motion pursuant to Rule 23(g)(1)(A). Plaintiffs respectfully seek a pre-motion conference on this issue, or leave to submit their application for appointment of Interim Class Counsel. Defendant Papa John's International, Inc. ("PJI") has advised that it takes no position on this motion.

Plaintiffs filed this case on May 13, 2016. For more than a year, this was the only open civil case alleging that PJI is liable for wage and hour violations caused by the under-reimbursement of delivery drivers in franchisee-owned Papa John's stores and was also the only open civil case alleging wage and hour violations against PJI for under-reimbursing delivery drivers at Papa John's stores it owns. Since Plaintiffs filed their case, several other plaintiffs have asserted similar claims for overlapping classes and collectives and PJI has begun moving to transfer these cases to this Court.¹ Accordingly, it is now necessary to appoint interim class counsel in the interests of judicial efficiency and to protect the class members' interests. Plaintiffs respectfully seek leave to move for the appointment of Finkelstein, Blankinship, Frei-

¹ PJI has moved to transfer the following cases to this Court: *Achoual v. Colonel's Limited, LLC*, No. 17-662 (E.D. Va.) and *Thomas v. Papa John's Int'l, Inc.*, No. 17-411 (S.D. Ohio). Plaintiffs reasonably anticipate other cases may also be transferred to this Court.

Pearson & Garber, LLP (“FBFG”) and Weinhaus & Potashnick, LLP (“Potashnick”) as Co-Lead Class Counsel and move for the appointment of Stephan Zouras, LLP (“Stephan Zouras”) and Paul LLP (“Paul”) as Co-Liaison Class Counsel for all relevant states (collectively, “Proposed Interim Class Counsel”).²

Pursuant to Fed. R. Civ. P. 23(g)(3), this Court may designate interim counsel to act on behalf of proposed classes prior to a decision on class certification. “The goal of all the procedures surrounding appointment of class counsel . . . is to establish appropriate structures and monitoring mechanisms to substitute for the ordinary attorney-client relationship and to assure performance of the fiduciary responsibilities owed by both the lawyer and the lead plaintiff to the class.” Stephen A. Saltzburg *et al.*, *Third Circuit Task Force Report on Selection of Class Counsel*, 74 Temp. L. Rev. 689, 696 (2001). “When appointing interim class counsel, courts generally look to the same factors used in determining the adequacy of class counsel under Rule 23(g)(1)(A).” *In re Municipal Derivatives Antitrust Litig.*, 252 F.R.D. 184, 186 (S.D.N.Y. 2008). The relevant factors are: (1) the work counsel have done in identifying or investigating potential claims in the action; (2) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. *Id.* (citing Rule 23(g)(1)(A)); *see also, e.g., Buonasera v. Honest Co., Inc.*, 318 F.R.D. 17, 18 (S.D.N.Y. 2016).

Proposed Interim Class Counsel commit to zealously and efficiently prosecuting this matter on behalf of Plaintiffs and the putative classes and collectives, and each of the Rule 23(g)(1)(A) factors favor their appointment. As to the first factor, Proposed Interim Class Counsel have done substantial work on this case -- not only were FBFG and Stephan Zouras the first firms to file this case, but they have obtained 33 driver declarations, retained and communicated with experts, participated in eight depositions and reviewed over 170,000 documents. FBFG and Stephan Zouras were co-lead class counsel in the predecessor case of *Bellaspica v. PJPA*, No. 13-3014 (E.D. Pa.), where Judge Rice praised them for as “a great example to the bar of what zealous advocacy really means.” *Bellaspica v. PJPA*, No. 13-3014, Transcript of Final Settlement Approval Hearing Before Honorable Judge Timothy A. Rice at 14 (E.D. Pa. June 22, 2016). Potashnick and Paul were co-lead class counsel in the predecessor case of *Perrin v. Papa John’s Int’l, Inc.*, No. 09-01335 (E.D. Mo.). Potashnick and Paul guided the *Perrin* case through successful motions for FLSA conditional certification and Rule 23 class certification, defeated PJI’s summary judgment motion, and obtained a \$12.5 million settlement.

The second and third factors both strongly favor the appointment of Proposed Interim Class Counsel. Collectively, Proposed Interim Class Counsel have more experience in pizza

² Proposed Interim Class Counsel represent class members in 31 states (New York, Alabama, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nevada, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia) and the District of Columbia, where Papa John’s stores violate state minimum wage law by under-reimbursing drivers for their driving expenses.

delivery driver under-reimbursement litigation than any other possible combination of plaintiffs' law firms. Courts have appointed Proposed Interim Class Counsel in more than forty pizza delivery driver under-reimbursement class actions, where their clients have been awarded well over \$60 million. Proposed Interim Class Counsel have obtained the highest per person recovery in any delivery driver class or collective action, *see Prince v. QS America, Inc.*, No. 1:15-cv-2033-TWT (N.D. Ga.) (awarding approximately \$2,021 per driver in case with drivers represented by Potashnick and Paul), and are also the only counsel to take any under-reimbursement claim to a contested verdict. *See, e.g., In the Matter of Arbitration Between [Claimant] and [Respondent 1] and [Respondent 2]*, 2015 WL 8682319, at *26 (AAA Aug. 13, 2015) (awarding \$20,707.42 in damages and \$122,783.18 in costs and fees to an under-reimbursed delivery driver represented by FBFG). Indeed, courts around the nation have recognized that Potashnick and Paul "are experienced and innovative wage and hour lawyers who have developed expertise in challenging the sufficiency of compensation for pizza delivery drivers under the FLSA." *Jimenez v. Pizzerias, LLC*, 2017 U.S. Dist. LEXIS 129820, *13-14 (S.D. Fla. Aug. 14, 2017); *Hackett v. ADF Cos., Inc.*, 2016 U.S. Dist. LEXIS 174775, *16 (D. Md. Dec. 19, 2016) (recognizing that Potashnick and Paul "have developed an expertise in challenging the sufficiency of compensation for pizza delivery drivers under the FLSA").

The final factor also favors the appointment of Proposed Interim Class Counsel because they have already committed substantial resources to this case and will continue to commit all resources necessary to ensure a successful result for the putative classes and collectives. As Proposed Interim Class Counsel have previously litigated complex class actions against nationwide chains, including Defendant Papa John's International, Inc., itself, it is clear they have sufficient resources to adequately represent the putative classes and collective in this matter. *See, e.g., Perrin*, No. 09-01335 (E.D. Mo.) (Potashnick and Paul appointed co-lead counsel against Defendant); *Fata v. Pizza Hut of America, Inc.*, No. 14-cv-376 (M.D. Fla.) (FBFG appointed co-lead counsel against Pizza Hut of America, Inc.).

Accordingly, Plaintiffs respectfully seek a pre-motion conference on this issue, or leave to submit their application for appointment of Interim Class Counsel. We thank Your Honor for your continued attention to this matter.

Respectfully submitted,

**FINKELSTEIN, BLANKINSHIP,
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